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09/761,500	01/16/2001	John H. Schneider	769-275	5911
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PITNEY HARDIN LLP ACCOUNT: ILLINOIS TOOL WORKS INC. 7 TIMES SQUARE NEW YORK, NY 10036-7311			EXAMINER PASCUA, JES F	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/761,500
Filing Date: January 16, 2001
Appellant(s): SCHNEIDER ET AL.

MAILED

OCT 11 2005

Group 3700

Ronald E. Brown
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 7, 2005 appealing from the Office action mailed April 20, 2004.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal No. 2005130

Appeal Brief filed February 17, 2005 for Application Serial No. 10/336,954, for which an Appeal No. has yet to be assigned.

Appeal Brief filed August 30, 2005 for Application Serial No. 10/337,026, for which an Appeal No. has yet to be assigned.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection 2-6 to be reviewed on appeal is correct.

Appellant's brief presents arguments relating to the specification being objected to as failing to provide antecedent basis for the claim term "distal end". This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,224,779	THOMPSON et al.	07-1993
5,713,669	THOMAS et al.	02-1998
6,131,369	AUSNIT	10-2000
6,412,254	TILMAN et al.	07-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thompson et al. '779. See Fig. 4.

The distal ends of first and second flanges 26, 27 meet at nose portion 25, which is free of attachment to the first and second walls 10, 11. Therefore, the limitation that the distal ends of the first and second flange portions are "free of attachment" to the first and second walls is met by Thompson et al. '779.

Claims 1-4 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Tilman et al. '254.

In column 7, lines 46-48, Tilman et al. '254 discloses, "In some embodiments, tamper evident structures can use principles described in U.S. Pat. No. 5,713,669, **incorporated by reference herein.**" (emphasis added). U.S. Pat. No. 5,713,669 (Thomas et al.) discloses that a fold or a peelable seal may connect wall segments, which extend above zipper profiles to each other.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tilman et al. '254 in view of Thomas et al.

Tilman et al. '254 discloses the claimed invention except that Tilman et al. '254 shows the slider access by tearing scores or perforations along the closed edge 18 instead of peeling apart the segments 19, 20. Thomas et al. shows that peeling apart analogous segments in order to access an analogous slider is an equivalent structure known in the art. Therefore, because these two slider accessing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute a peelable seal for lines of weakening.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit '369 in view of Thomas et al.

Ausnit '369 discloses the claimed invention except that Ausnit '369 shows the slider access by tearing lines of weakness instead of peeling apart the segments. Thomas et al. shows that peeling apart analogous segments in order to access an analogous slider is an equivalent structure known in the art. Therefore, because these two slider accessing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute a peelable seal for lines of weakening.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al.

Thomas et al. discloses the claimed invention except for the wall segments 36, 38 being formed from package walls 12, 14. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to form the wall segments of Thomas et al. from the package walls, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

(10) Response to Argument

In response to appellant's argument that the configuration of the Thompson et al. reference would not allow for use of a slider, it is noted that the feature upon which applicant relies (i.e., slider) is not recited in appealed claim 1. Although the claims are

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interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding appellant's argument that the closed edge 18 of Tilman et al. is "created by folding the web, rather than by a seal", the Examiner has pointed in the final Office action, mailed 04/20/2004, that column 7, lines 46-48 of Tilman et al. discloses, "In some embodiments, tamper evident structures can use principles described in U.S. Pat. No. 5,713,669, **incorporated by reference herein.**" (emphasis added). U.S. Pat. No. 5,713,669 (Thomas et al.) discloses that a fold or a peelable seal may connect wall segments, which extend above zipper profiles to each other. See column 4, lines 1-5 and lines 37-42 of Thomas et al. Therefore, the incorporation of the Thomas et al. reference into Tilman et al. anticipates the recitation, "said segment extending over said profiles' interlocking members and being sealed to an opposite one said segments thereby forming a seal, said seal providing a frangible connection to provide a tamper-evident feature for said reclosable package."

Regarding appellant's argument, "that the manufacturing processes of the Tilman and Thomas references are completely different..., these references have widely different configurations and their combination with regard to certain features would inevitably result in conflicts of purpose," it brought appellant's attention that the method of forming the device is not germane to the issue of patentability of the device itself. Furthermore, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the

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references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Thomas et al. suggests either tearing scores or perforations along the closed edge of wall segments or peeling the wall segments apart may access the slider of a package analogous to Tilman et al.

In response to appellant's argument that there is no suggestion to combine the Ausnit and Thomas et al. references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Thomas et al. suggests the slider of a package analogous to Ausnit may be accessed by either tearing scores or perforations along the closed edge of wall segments or peeling the wall segments apart.

Appellant's argument that forming the wall segments 36, 38 of Thomas et al. from package walls 12, 14 "is not an obvious variation by way of 'forming in one piece an article which has been formerly formed in two pieces and put together'" has been considered and deemed to be opinion. Appellant submits no evidence to prove that a person having ordinary skill in the would not be able to form the wall segments 36, 38 of Thomas et al. from package walls 12, 14.

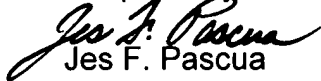
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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Jes F. Pascua
Primary Examiner

Conferees:


Robin A. Hylton, Primary Examiner


Stephen Kirk Cronin, Primary Examiner